

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

MAKSIM LUTSKOV,

Petitioner,

V.

Civil Action No. 04-12601-PBS

LOIS RUSSO,

Respondent.

**RESPONDENT'S MOTION TO DISMISS PETITION  
FOR WRIT OF HABEAS CORPUS**

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, the respondent, Lois Russo, respectfully submits this motion to dismiss the petition for writ of habeas corpus filed by the petitioner, Maksim Lutskov, on the grounds that the petition fails to state a claim upon which relief may be granted. In support of this motion, and as is set forth more fully in the accompanying memorandum of law, the respondent states that the petitioner has failed to exhaust one of the claims stated in his petition for a writ of habeas corpus. Specifically, Ground Three in the instant petition was not presented to the Massachusetts Supreme Judicial Court (“the SJC”). Because the petitioner has not yet provided the state’s highest court with the first opportunity to pass on the merits of this claim, the petition should be dismissed. 28 U.S.C. § 2254(b)-(c); *Rose v. Lundy*, 455 U.S. 509, 510 (1982).<sup>1</sup>

<sup>1</sup> Respondent's remaining defenses are not addressed here because the doctrine of exhaustion mandates dismissal of the petition. In the event that this Court declines to dismiss the petition due to failure to exhaust, the respondent reserves the right, and requests the opportunity, to address the merits of the remaining claim or claims in this petition.

WHEREFORE, the respondent respectfully requests that this Court dismiss this habeas petition on the grounds that it contains an unexhausted claim.

Respectfully submitted,

THOMAS F. REILLY  
ATTORNEY GENERAL

/s/ Maura D. McLaughlin  
Maura D. McLaughlin (BBO # 634923)  
Assistant Attorney General  
Criminal Bureau  
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Boston, Massachusetts 02108  
(617) 727-2200, ex. 2857

Dated: February 14, 2005

**Certification of Compliance with Local Rule 7.1**

I hereby certify that I have this day attempted in good faith to contact counsel for the petitioner in an effort to resolve or narrow the issues raised in the foregoing motion.

/s/ Maura D. McLaughlin  
Maura D. McLaughlin

Dated: February 14, 2005

**Certificate of Service**

I hereby certify that on February 14, 2005, I caused a copy of the above document to be served by first-class mail, postage prepaid, upon counsel for the petitioner, Maksim Lutskov, at the following address: Thomas C. Foley, Esq., Attorney at Law, P.O. Box 2187, South Hamilton, Massachusetts 01982.

/s/ Maura D. McLaughlin  
Maura D. McLaughlin